

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

To Be Argued By
JOSEPH I. STONE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

MARGARITA INEZ HORMAZABAL TORRES,

Defendant-Appellant.

74/1320

B

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX FOR DEFENDANT-APPELLANT

MARGARITA INEZ HORMAZABAL TORRES
ELIANA LAURA HORMAZABAL TORRES

JOSEPH I. STONE

Attorney for Defendant-Appellant
Office & P.O. Address
277 Broadway
New York, New York 10007



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PRELIMINARY STATEMENT

The defendant-appellant, Margarita Inez Hormazabal Torres, appeals from a judgement of the United States District Court for the Southern District of New York, convicting her after trial, with a jury, before Hon. Lloyd F. MacMahon, of the crimes of conspiracy to violate the narcotic laws and one substantive offense of possession, 21 U.S.C. Section 812, et. seq.

The defendant was sentenced as a young adult offender and incarcerated pursuant to that statute by Judge MacMahon on March 5, 1974. The undersigned was the attorney for the defendant pursuant to an assignment under the Criminal Justice Act and this Court, pursuant to the order dated March 15, 1974, continued that assignment. The defendant has been without bail since her arrest and is presently incarcerated pursuant to the above judgement and commitment.

STATEMENT OF FACTS

The defendants, Margarita Torres and her sister, Eliana Torres, were arrested without a warrant on December 11, 1973, while in the President Hotel. This arrest was approximately one hour after co-defendant Ricardo Lawrence was arrested in the vicinity of West 180th Street, New York, New York. Lawrence was found in possession of approximately 2 kilograms of cocaine. When the defendants, Margarita Torres and Eliana Torres, were arrested

certain passports were taken from their possession and introduced into evidence at trial. After their arrest and within the statutory time limits, the defendants were brought to the office of the Special Assistant U.S. Attorney, Harry C. Batchelder, Jr., where an extensive interview took place. Mr. Batchelder was very careful in fully and completely advising the defendant of all her rights and after she stated, through the services of an interpreter, that she understood her rights, she gave Mr. Batchelder a lengthy and complete statement, which was introduced in evidence after the judge held a hearing as to its admissibility. The defendant has asked that I repeat her assertions made at the hearing that she was not completely aware of her rights. It is conceded that she was given a complete warning as prescribed in Miranda v U.S. However, this court should take into consideration the fact that this woman is a native of Santiago, Chile, and constitutional rights as prescribed under our law may not be an everyday item that a foreign national would familiarize herself with. This statement, in evidence, admitted that the defendant secreted certain packages from Chile to Miami and that she handed these packages to Lawrence in Miami. There was no evidence that she ever had possession of these packages from Miami to New York or in New York and the issue was whether or not she had knowledge of what the packages contained. The jury, on the basis of all the evidence, direct and circumstantial, including her statement, felt that she had knowledge and accordingly, convicted.

Prior to her arrest, she was only seen with Lawrence

walking down the street with her sister in front of the hotel and was not a suspect until after Lawrence's arrest and after her arrest. The defendant challenges her search as being made without a warrant, without probable cause and in violation of her (alien) Fourth Amendment rights, which are afforded "persons", not necessarily citizens of the United States.

It is the defendant's contention that the conspiracy ended with her arrest and therefore her statement, even if this court would accept it as admissible, could not be used to establish the existence of a conspiracy and that furthermore, as to the second count of the indictment, the statement only admitted possession with the Southern District of Florida and not within the Southern District of New York. Both applications were made to the judge at the conclusion of the government's case in support of defendant's application under Rule 29 of the Federal Rules of Criminal Procedure, were considered and were rejected. In the interests of economy, basic relevant facts which are not in dispute will not carry record page references. The defendants statements were admitted into evidence and both testified.

The defendant Ricardo Lawrence pleaded guilty and was severed. He also testified as a defendant's witness. He lived in New York, went to Chile, met appellant and her sister, the co-defendant, entered into an affair with appellant and induced the two sisters to smuggle some "delicate" packages, strapped to their bodies, into Miami. The inducement was the trip to New

York and up to \$1,500.00. Lawrence flew to Miami separately and met the appellant and her co-defendant at a hotel where he took possession of the packages. All three flew to New York with the packages (admitted by Lawrence to be cocaine) in Lawrence's suitcase checked in the baggage compartment. They registered at a New York hotel in a two room suite.

Pursuant to an informant's tip, agents and police officers staked out the hotel from December 7 thru 11, 1973, and surveilled Lawrence and the defendants. On December 11, 1973, Lawrence and the co-defendant left the hotel with Eliana Torres carrying a large white shoulder bag. They picked up a car in a nearby lot and Lawrence drove Eliana Torres back to the hotel which she entered minus the white bag. Lawrence drove to an apartment house where, again pursuant to the informant, agents were waiting. Other agents were following Lawrence's car. Lawrence was arrested and the white bag containing almost two kilos of cocaine seized.

Some of these agents returned to the hotel, secured a key to the defendants' room (R203), and a little after 12 am. on December 12, 1973, knocked at the room door. The agents said that they announced that they were police and were admitted (R21-23). The co-defendant testified that the agent, in Spanish, said that he was sent up by the hotel about the phone pursuant to a request from the room (R21). The sisters were partially undressed preparing for bed. The defendants were asked for their

passports and immediately arrested. The passports were valid. No additional drugs were found. None of the agents who testified had ever seen or even known of the appellant prior to her arrest.

Both the appellant and the co-defendant made and signed formal statements admitting the facts of the smuggling into Miami, but denying specific knowledge that the packages contained cocaine nor that they had any knowledge of what Lawrence intended to do with the contents of the packages.

At no time were search or arrest warrants for any of the defendants sought or obtained.

QUESTIONS PRESENTED

1. The warrantless search!
2. The venue and jurisdictional question!
3. The charge!
4. The conspiracy!

ARGUMENT

POINT I

APPELLANT'S WARRANTLESS ARREST WAS IMPROPER

Again an appellant must come before this court to red~~e~~fine, and hopefully reaffirm, her Fourth Amendment right to be secure from warrantless intrusion and arrest.

All courts support in very emphatic language the cardinal principle that there may be no arrest without a valid warrant issued by a magistrate upon probable cause. Yet, somehow, many such arrests, as herein, are held valid. None of the recognized exceptions apply herein. There was no possibility of destruction of evidence. It was already seized from Lawrence. There was no possibility of appellant fleeing and escaping. She was in her hotel room with agents constantly surveilling the room and hotel. There was no known or suspected on-going crime being committed in the room by appellant or anyone else. Nor did the government present any evidence of some emergency situation called for the fashioning of a new exception to the warrant requirement.

What information did the agents have? Lawrence had the cocaine and was arrested while trying to make a delivery. Lawrence would use women to help smuggle in the cocaine. Lawrence had women in his hotel suite. Even the Chilean passports of the two women could add very little since the informant did not know from where the women would depart for Miami. There was no description of the appellant. There were no observations of suspicious activities by appellant, or of any activities at all, for that matter.

Appellant does not argue that a magistrate might not have issued a warrant even on these tenuous facts. Appellant does not argue that such warrant would necessarily be invalid. Appellant does argue that these facts are clearly insufficient

for an agent, even a supervisory agent, to make the decision as to probable cause. (Brinegar v U.S., 338 U.S. 160; Draper v U.S., 357 U.S. 935; Wong Sun v U.S., 370 U.S. 708; Johnson v U.S., 333 U.S. 10)

This vice of the agents by-passing the mandatory requirement of an arrest warrant was compounded by the method of entry. Assuming the testimony of the agent that he announced himself as the police, he did not go further and announce his purpose--to arrest the occupants. He should have done so. (Sabbath v U.S. 391 U.S. 585; Miller v U.S., 351 U.S. 301; Terry v Ohio, 392 U.S. 1; Doman v U.S., 435 F2D 385) True, the door was not forced. But there was intimidation. Most people, certainly most innocent ones, would open to a police knock at midnight. Certainly someone from a country where one does not question police actions would not do so here. In any event, the agents had a key, obtained, again, without a court order. They were going to enter no matter what the obstacles.

A clear, definitive expression of disapproval of such police tactics would protect the individual constitutionally, and also protect from reversals the tremendous expenditure of effort, money, manpower, court time and risks of personal danger involved in the detection, apprehension and trial especially of drug law violations.

Since the seized passports and appellant's statement are fruits of an improper arrest, they must be suppressed. (Wong Sun v U.S., Supreme)

POINT II

THE INDICTMENT SHOULD HAVE BEEN DISMISSED FOR LACK OF VENUE

Both counts of the indictment charge illegal activity in the Southern District of New York. The proof negates this venue.

The only knowledge the government had as to appellant's role in the alleged conspiracy was that the informant had told the agents Lawrence would use women to smuggle in the cocaine. Appellant admitted she was one of these women. Once through Miami customs, she gave the contraband to Lawrence. That ended her part in the transaction. Unless she were an integral part of Lawrence's organization, if any, and no such evidence appeared, Lawrence had no further use for appellant except for whatever personal relationship remained. There is no evidence that appellant knew of or did anything to further the sale of Lawrence's cocaine.

There is nothing inherently illogical about a plan or conspiracy limited to the smuggling with the smuggler playing no part in either the distribution or sale of the contraband and taking no percentage of the profits. The transportation of the cocaine into the Southern District of New York was done via Lawrence's suitcase. The fact, alone, that appellant accompanied Lawrence does not prove guilt. Knowledge, perhaps, but not guilt. There is no evidence from which even an inference of continuing

partnership, conspiracy, in New York, can be drawn. In Miami, certainly, in New York, no!

As for the substantive count of possession again, there is no evidence except propinquity, that appellant could exercise any dominion or control over the cocaine. There is no evidence that appellant had any knowledge as to any potential buyer of the cocaine. There is no evidence that she had any voice in the disposition of the cocaine. Nor is there any evidence that the appellant did anything in New York but what might be expected of a young woman here for the first time. She saw the sights and visited with old friends.

Venue, therefore, was in the wrong District for the conspiracy count and improper on the substantive count because of lack of evidence. On the motion to dismiss Count II because of lack of evidence, the prosecution's only rebuttal was as to a continuing conspiracy (R21-23).

As for aiding and abetting, these require some specific intent, some purposive attitude, some participation in the criminal act, some conduct of an affirmative nature. (U.S. v Kelton, 446 F2d 669, 671; Johnson v U.S., 195 F2d 673, 675; U.S. v Hill, 464 F2d 1287) None was shown as against this appellant in the Southern District of New York for either count in this indictment.

POINT III

DID THE COURT ERR IN ITS CHARGE?

Counsel for appellant requested the court to charge that there was no testimony as to appellant aiding, abetting or possessing within the Southern District of New York. The Court declined to do so (R21-23).

It would appear wholly proper for the Court to charge each element of the charged crime, including venue, and for the jury to consider each such element, including venue.

Appellant sees no vice or harm in the requested charge. It would round out what is otherwise a most complete and fair charge.

It would appear to be a proper question of fact for the jury to determine as to whether or not any evidence or any fair inference from the evidence could place venue in this district.

POINT IV

A conspiracy, as a matter of law, ends with the arrest of the conspirator. In order to be a member of a conspiracy, the evidence must meet "a threshold test" where the acts and declarations of the individual conspirator determine whether he/she is a member of the conspiracy. If this "threshold test" was sustained by the government's proof, then the acts and declarations of the other conspirators could be used against the conspirator.

Here, it should be conceded that until the arrest of the defendant-appellant, she said nothing nor did she do anything except be seen in the presence of her sister and co-defendant Lawrence. This court stated in U.S. v Fantuzzi 463 F2d 683 that..

"It is hornbook law that before the statements of the other conspirators concerning Bruno may be used as evidence against him it must be proved that Bruno was in fact part of the conspiracy."

The court in the Fantuzzi case quoted U.S. v Geaney, 417 F2d 1116, and Lynch v U.S., 397 U.S. 1028. Again in Fantuzzi the court stated..

"...The government has proved little more than association between Bruno and the conspirators."

As was stated in U.S. v Ragland, 375 F2d 471,

"It is true that an association with an alledged conspirator, without more, is insufficient to establish the necessary foundation for the admissibility of the incriminating statements..."

Therefore, the court should have dismissed the conspiracy count as against defendant-appellant Torres, because until her arrest and until after she made an incriminating statement there was no evidence whatsoever that she was a member of the conspiracy. It is assumed that the acts and declarations of an alledged conspirator mean the acts and declarations which occurred during the course of the conspiracy and not after its termination.

CONCLUSION

WHEREFORE, it is respectfully submitted that the search of the defendant's hotel room was without probable cause, was illegal, the evidence seized should have been suppressed including the statements of the defendant, and the conspiracy terminated as a matter of law and was not established sufficiently to sustain defendant's motion pursuant to F.R.C.P. Rule 29. The judgement of conviction should be reversed and the indictment dismissed.

Respectfully submitted,

Joseph I. Stone
Attorney for Defendant-Appellant
Margarita Torres

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HCB, Jr. :cw

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

**RICARDO LAWRENCE,
MARGARITA INES HORMAZABAL-TORRES,
and ELIANA LAURA HORMAZABAL-TORRES,**

Defendants .

INDICTMENT

73 Cr. 1171

Metzger

10

The Grand Jury charges:

1. From on or about the **1st** day of **December, 1973**
and continuously thereafter up to and including the date of
the filing of this indictment, in the Southern District of
New York, **RICARDO LAWRENCE,
MARGARITA INES HORMAZABAL-TORRES,
and ELIANA LAURA HORMAZABAL-TORRES**

the defendants and others to the Grand Jury unknown, unlaw-
fully, intentionally and knowingly combined, conspired, confederated
and agreed together and with each other to violate Sections 812,
841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said
defendants unlawfully, intentionally and knowingly would distribute
and possess with intent to distribute Schedule I and II
narcotic drug controlled substances the exact amount thereof
being to the Grand Jury unknown in violation of Sections 812,
841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

(1) On or about December 7, 1973 the defendants RICARDO LAWRENCE, MARGARITA INES HORMAZABAL-TORRES and ELIANA LAURA HORMAZABAL-TORRES went to the President Hotel at 234 West 48th Street, New York, New York.

(2) On or about December 11, 1973, defendants RICARDO LAWRENCE and ELIANA LAURA HORMAZABAL-TORRES went to a parking lot on Eighth Avenue between 49th and 50th Streets.

(3) On or about December 11, 1973, defendant ELIANA LAURA HORMAZABAL-TORRES carried in a large white shoulder bag cocaine to the parking lot on Eighth Avenue between 49th and 50th Streets.

(4) On or about December 11, 1973, defendant RICARDO LAWRENCE had in his possession in a large white shoulder bag approximately 1894.5 grams of cocaine hydrochloride.

(Title 21, United States Code, Section 846.)

NCB, Jr.:cw

SECOND

COUNT

The Grand Jury further charges:

On or about the 11th day of December, 1973
in the Southern District of New York,

**RICARDO LAWRENCE,
MARGARITA INES HORMAZABAL-TORRES
and ELIANA LAURA HORMAZABAL-TORRES**

the defendant, , unlawfully, intentionally and knowingly
did possess with intent to distribute, a Schedule II
narcotic drug controlled substance, to wit, approximately
1894.5 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A)); (Title 18,
United States Code, Section 2.)

THIRD COUNT

The Grand Jury further charges:

From on or about the 11th day of December, 1973,
and continuously thereafter up to and including the date of the
filing of this indictment, in the Southern District of New York
and elsewhere, **RICARDO LAWRENCE, MARGARITA INES HORMAZABAL-
TORRES, and ELIANA LAURA HORMAZABAL-TORRES**, the defendants,
did travel and cause travel in interstate and foreign commerce

and did use and cause the use of facilities in interstate and foreign commerce, to wit, commercial aircraft, with intent to distribute the proceeds of an unlawful activity and to otherwise promote, manage, establish and carry on and to facilitate the promotion, management, establishment and carrying on of said unlawful activity, to wit, a business enterprise involving narcotics and controlled substances, and did thereafter distribute the proceeds and did otherwise promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of the said unlawful activity.

(Title 18, United States Code, Sections 1952 and 2.)

FOREMAN

PAUL J. CURRAN
United States Attorney

JUDGE

MAC 73 CRIM. 1141

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
VS.	Harry C. Batchelder, AUSA
RICARDO LAWRENCE	264-6395
MARGARITA INES HORMAZABAL-TORRES ✓	
ELIANA LAURA HORMAZABAL-TORRES ✓	
	For Defendant:

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
one,					
clerk,					
Marshal,					
Attorney,					
CALIFORNIA XXXXX T. 21					
XXXXXX 846,812,841(a)(1),(b)					
18:1952(Consp. to viol. Fed. Narco. Laws.(Ct1)					
Distr. & possess. w/intent to distr. CocaineII(Ct.2)					
Interstate and foreign to aid unlaw. activities)(Ct.3)					
(Three Counts)					

DATE	PROCEEDINGS
2-21-73	Filed indictment.
2-27-73	All defts. (attys. present) Plead not guilty. Motions returnable in 10 days. Case assigned to Judge Metzner for all purposes. Deft's continued remanded. in lieu of bail previously fixed by Mag. Lawrence-Bail fixed at \$100,000. cash. Margarita Ines Hormazabal-Torres and Eliana Laura Hormazabal-Torres. Both defts. bail fixed at \$25,000. cash each. Carter, J.
1-10-74	Filed Govt. notice of readiness for trial.
2-25-74	Filed Govt's. Vorp-Dire and request to charge.

Cont'd on page 2

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEPENDANT
1-25-74	Filed Govt.'s memo of law in opposition to motion to sever.		
1-25-74	Filed Govt.'s. memo of law in opposition to defense counsel motion to suppress.		
1-25-74	Filed Govt.'s. memo in support of travel act instructions.		
1-2-74	Pre-Trial conf. held & concluded. Trial fixed for 1-21-74 at 10:30 a.m. MacMAHON, J.		
1-16-74	Motion to sever deft. Lawrence, Decision Res.		
1-17-74	Motion to suppress begun.		
1-18-74	Cont'd and concluded. Motion to suppress denied.		
1-18-74	Deft. Lawrence (atty present) pleads guilty to count 1. Pre-sentence report ordered. Set for sentence 3-5-74. MacMahon, J.		
2-1-74	Trial begun. Court dismisses Count 3 with prejudice. MacMahon, J.		
2-2-74	Trial cont'd.		
1-23-74	Trial cont'd and concluded. Jury finds deft. Margarito-Torres Guilty on cts 1 and 2. Jury finds deft Eliana Torres Guilty on cts 1 and 2. Date of sentence 3-5-74 at 10AM. Defs remanded. MacMahon, J.		
1-29-74	M. & E. TORRES- Filed CJA Form # 21, Authorization and voucher for interpreter. MacMAHON, J.		
1-29-74	M & E TORRES - Filed CJA Form 21, authorization and voucher for interpreter. MacMAHON, J.		
2-1-74	Filed the following papers received from U.S. Magistrate: Docket entry sheets (3), Criminal complaint, Disposition sheet Appointment of counsel and notice of appearance. TORRES - Alfred Toombs, 335 B'Way. 10013, H. TORRES- Joe Stone 277 B'Way, NYC. 10007. R. LAWRENCE - George Rosenbaum 51 Chambers St. NYC. Be 3-8120.		
2-7-74	RICARDO LAWRENCE - Filed CJA Form # 21 - Authorization and voucher for interpreter.		
2-27-74	Filed CJA Form # 21 ; Authorization for transcript, from Sou. Dist. Ct. Reporters. MacMAHON, J.		
3-7-75	MARGARITA TORRES- Filed notice of appeal from judgment rendered on March 5-74; leave to appeal in forma pauperis is granted-MacMahon J.		

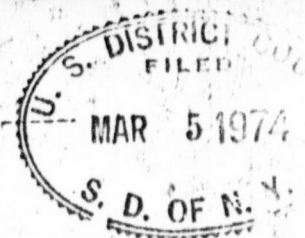
DATE

PROCEEDINGS

- 3-12-74 ELIANA LAURA H. TORRES - Filed notice of appeal from judgment rendered on March 5-74; leave to appeal in forma pauperis is granted-MacMahon J. m/n
- 3-5-74 ELIANA LAURA HORMAZABAL-TORRES - Filed Judgment and issued copies. (Atty. Present)
It Is Adjudged that the Deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of as a YOUNG ADULT OFFENDER pursuant to Title 18, Section 4209 U.S.C. for treatment and supervision as provided in Section 5010B of Title 18 U.S.C., until discharged by the Federal Youth Correction Division of the Board of Parole as provided in Title 18 Section 5017 C, U.S.C. Counts 1 & 2 are to run concurrently with each other, and THREE (3) YE ARS, special parole on cts 1 & 2. MacMAHON, J.
- 2-5-74 MARGARITA INES HORMAZABAL-TORRES - Filed Judgment and issued copies. (Atty Present)
It Is Adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of as a YOUNG ADULT OFFENDER pursuant to Title 18, Section 4209 U.S.C., for treatment and supervision as provided in Section 5010B of Title 18 U.S.C., until discharged by the Federal Youth Correction Division of the Board of Parole as provided in Title 18, Section 5017C, U.S.C. Cts. 1 & 2 are to run concurrently with each other, and THREE (3) YEARS, special parole on cts. 1 & 2. MacMAHON, J.
- 3-15-74 LAWRENCE - Filed CJA Form # 21 - Authorization and voucher for interpreter fees to M. Seltzer in the Amt. of \$30, MacMAHON, J.

United States District Court

FOR THE
SOUTHERN DISTRICT OF NEW YORK



United States of America

v.

No. 73 Cr-1141

ELIANA LAURA HORMAZABAL-
TORRES

On this 5th day of March, 1974, came the attorney for the government and the defendant appeared in person and Lawrence Tombs, counsel.

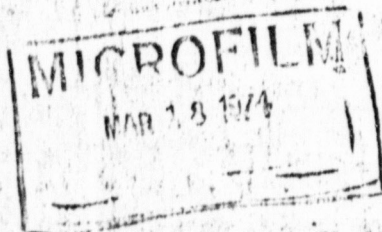
It IS ADJUDGED that the defendant upon his plea of not guilty and a verdict of guilty by a jury, has been convicted of the offense of Conspiracy, distribution and possession of Cocaine, W/I to distribute. (Title 21, U.S.C. Sections 812, 841(a)(1) 841(b)(1)(A))

as charged in Count 1 and 2 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It IS ADJUDGED that the defendant is guilty as charged and convicted.

It IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of as a YOUNG ADULT OFFENDER pursuant to Title 18, Section 4209 U.S.C., for treatment and supervision as provided in Section 5010B of Title 18 U.S. Code, until discharged by the Federal Youth Correction Division of the Board of Parole as provided in Title 18, Section 5017C, U.S.C. Counts 1 and 2 are to run concurrently with each other, and THREE (3) YEARS, special parole on Counts 1 and 2.

It IS ADJUDGED that



It IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

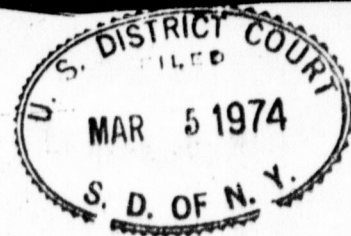
The Court recommends commitment to

Cliff F. Vane Melvin
United States District Judge.

Raymond F. Burghardt

United States District Court

FOR THE
SOUTHERN DISTRICT OF NEW YORK



United States of America

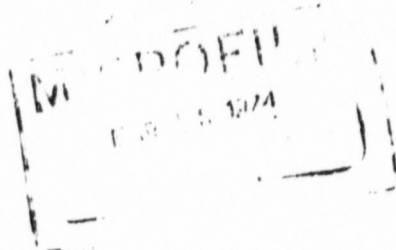
v.

MARGARITA INES HORMAZABAL
TORRES

No. 73 Cr-1141

On this 5th day of March, 1974, came the attorney for the government and the defendant appeared in person and Joseph Stone, counsel.

IT IS ADJUDGED that the defendant upon his plea of not guilty and a verdict of guilty by a jury, has been convicted of the offense of Conspiracy, distribution and possession of Cocaine, with intent to distribute. (Title 21, U.S.C. Sections 812, 841(a)(1) and 841(b)(1)(A))



as charged in Count 1 and 2 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

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IT IS ADJUDGED that⁵

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Sam F. McManis
United States District Judge.

The Court recommends commitment to⁶

Raymond L. Buehler
Clerk.

Margarita Torres and Eliana Torres.

Government ready to proceed?

MR. BATCHELDER: Ready for the government, your Honor. Good morning, sir.

THE CLERK: Defendant Margarita Torres ready?

MR. STONE: Defendant Margarita Torres ready.

THE CLERK: Defendant Eliana Torres ready?

MR. TOOMBS: Yes, your Honor.

THE COURT: We'll proceed with the suppression as to the scale.

MR. BATCHELDER: The government would call Special Agent Balazs.

FRANK BALAZS, called as a witness by the government, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BATCHELDER:

Q Calling your attention to the evening of December 11, 1973 were you on duty on that day?

A Yes, sir.

Q Did you have occasion in the early morning hours of December 12, 1973 to go to the President Hotel?

A Yes, sir.

Q Would you please tell the Court what happened?

1
2 [A At the President Hotel, we went to the lobby,
3 obtained a key to Room 803, went up to the room along with
4 one of the security guards and one of our men, knocked on
5 the door, conversed with the occupants in Spanish. /

6 The door was opened, we went inside, arrested
7 two females.

8 MR. STONE: Excuse me for interrupting, your
9 Honor. We have a problem with the girls with another
10 interpreter who just came in. They are discussing among
11 themselves so they are obviously not translating. I hate
12 to interrupt but that is--

13 THE COURT: You have got to be translating
14 here and not talking together obviously.

15 MR. STONE: May I suggest that we each use one
16 interpreter, your Honor? It may be easier to facilitate the
17 trial.

18 THE COURT: All right.

19 MR. LITCHELDER: I think that is an excellent
20 suggestion.

21 THE COURT: All right.

22 Let's proceed. We are 45 minutes late
23 getting started with this trial this morning as it is.

24 Read back the testimony so far, Mr. Reporter.

25 (Record read.)

1 found to have a total weight of 1,994.2 grams of which
2 95% was cocaine hydrochloride; the remainder being an
3 adulterant. After weighing and analyzing the content of
4 the nine plastic bags, he placed the nine plastic bags
5 Government's Exhibit 12 for identification, at which time
6 he locked and sealed them in six bags. He further
7 stipulated that they would be retained by the United States
8 Chemists' Office until today which they were.

10 MR. STONE: That is agreed to, your Honor.

11 MR. TOOMBS: So stipulated.

12 THE COURT: Thank you.

13 MR. BATCHELDER: Your Honor, the government
14 will call as its next witness, Police Officer Daniocek.

15 J O H N D A N I O C E K , called as a
16 witness by the government, having first
17 been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BATCHELDER:

20 Q Calling your attention to December 11, 1973
21 were you on duty on that date, please?

22 A Yes, sir, I was.

23 Q Will you please tell the Court and jury what
24 happened with respect to these defendants on that date,
25 please, if anything?

1

MSPA

Danielock-Direct

2

A With the defendants Eliana Torres and

3

Margarita Torres, on that date, I was party to the arrest

4

of those defendants at the Hotel President.

5

Q Would you please tell the Court and the jury

6

what happened?

7

A On that date, after the arrest of the defendant

8

Ricardo Lawrence, we went back to the President Hotel.

9

[At this time, myself and other officers went

10

up to the room, Room 803. I knocked on the door, and

11

in Spanish announced that we were police and we wanted

12

entry into the hotel room.

13

Q What happened if anything then?

14

A After a few words with, I believe, the defendant

15

Eliana, she finally opened the door.

16

We entered. At this time I placed Margarita

17

Torres under arrest.

18

Q What happened if anything then, please?

19

A At this time I asked the defendant Eliana

20

for passports. She volunteered that she had just arrived

21

from Chile and I asked her for her passports. /

22

MR. BATCHELDER: May I please have this marked

23

as Government's Exhibit 13 for identification.

24

(Government's Exhibit 13 marked for

25

identification.)

not have been correctly interpreted.

MR. BATCHELDER: I have no further questions.

MR. STONE: No further questions, your Honor.

MR. TOOMBS: No further questions.

THE COURT: You are excused.

(Witness excused.)

MR. TOOMBS: Eliana Hormazabal Torres.

E L I A N A T O R R E S , called as a
witness on her own behalf, having been
duly sworn through the interpreter, testified
through the interpreter as follows:

DIRECT EXAMINATION

BY MR. TOOMBS:

Q Would you keep your voice up, Eliana, so your
sister can hear you too?

Tell the jury how old you are.

A I am 23.

Q How old is your sister, Margarita?

A She is 22.

Q How much education did you have in Chile?

A Secondary school.

Q What kind of work were you doing in Chile
before you came to the United States?

A We did everything together; and both of us

relationship he had with Margarita, and just personal things like that.

Q Where did he take you?

A He drove around and took me to the hotel.

Q Did he tell you where he was going?

A No, I said to him, "What a short ride." He said, "Well, I have things to attend to. Don't worry, I will be back soon."

Q What did you do with the white bag when you got in the car?

A I took it off and left it on the seat.

Q Did he tell you to leave it in the car when he dropped you at the hotel?

A Yes.

Q So you then went back to the hotel room?

A Yes.

Q What happened next relative to this case?

A I took off my clothes, put on my nightgown and went to bed. I watched television. Margarita was writing a letter to mother, and then suddenly there was knocks on the door; and words in English were said; I said the best I could that I do not speak English but Spanish.

They said something like whether we had called

the reception of the hotel, and they wanted to check something

There was someone who speaks Spanish and he said, "Open the door, open the door."

And because of this insistence and since I was not afraid of anything special, I opened the door.

Then they entered. I don't remember whether there were five or six.

Q What did they say to you when they entered?

A Oh, I don't remember but one who speaks Spanish said, "Where are the drugs? Where are the drugs?"

Q What did you say when he said, "Where are the drugs? Where are the drugs?"

A And I said, "What drugs are you speaking of," and I made that gesture so that it could check.

So they started looking around at everything, the bags, the suitcases. But they couldn't find anything then.

Then they looked at our documents, our passports, etc.

THE COURT: Mr. Toombs, how much longer do you expect to be?

MR. TOOMBS: About ten minutes, I believe, your Honor.

THE COURT: We'll take a short recess.

1
2 declaration over her by another conspirator, incriminating
3 her. Her name isn't mentioned. She is not described.
4 She's an unknown entity until after her arrest, until after
5 she made that statement.

6 Therefore, it's my position as a matter of law
7 that she certainly couldn't have been part of a conspiracy.
8 There was no agreement that can be inferred by her acts
9 and declarations independent of anything until she made
10 statements after her arrest.

11 THE COURT: Denied.

12 MR. STONE: Your Honor, as to the second count,
13 the government has offered no proof other than--I make this
14 again in connection with the first count and
15 supplement it. The government has offered no proof other
16 than her statement that she was in possession of the package.
17 I can concede that her knowledge of what was contained in
18 those packages is a jury question. However, even assuming
19 that her statement is accepted for all it's worth, she does
20 not make any statement whatsoever that she possessed those
21 packages within the Southern District of New York.

22 Her statement simply states that she came to
23 Miami, admittedly took these packages from Chile or to
24 Peru and into Miami, and in Miami, on page two of her
25 statement, "Ricardo said, 'Don't worry,' and gave me the two

1 packages when he got to Miami. When he gave me the two
2 packages, 'You carry this too'."

3
4 MR. STONE: I'm sorry. I am reading Eliana's
5 statement. Strike that.

6 Margarita on page two said, "I removed the
7 package in Miami and gave it to Ricky. I didn't wear
8 anything on the way up from Miami. Ricky put everything in
9 the suitcase. I didn't see what happened to the packages.
10 So on the basis of her own statement, which admits the
11 transportation of these packages from Chile to Miami,
12 she did nothing within the Southern District of New York
13 to make her a conspirator on the basis of her own
14 statement and certainly cannot sustain either the first or
15 second count.

16 THE COURT: What do you say to that?

17 MR. BATCHELDER: Your Honor, the statements
18 indicate, irrespective of the statements, there is a
19 concert of action between three defendants as shown by the
20 airline tickets, and her statement with respect to coming
21 into Miami with the narcotics on her. The conspiracy was
22 a continuing act all the way; having its end in the
23 Southern District .

24 THE COURT: Motion is denied.

25 MR. BATCHELDER: Thank you, your Honor.

1 MB^Pa 232
2 MR. STONE: To the filing of the indictment, and
3 I think as a matter of law it would terminate at the
4 arrest of the defendants because you also stated that
5 Lawrence's testimony--

6 THE COURT: I didn't say it terminated. I
7 simply said what the indictment charged.

8 MR. STONE: All right. The reason I bring that
9 out is I think Lawrence's testimony as to the fact of the
10 agreement occurred after the termination of the conspiracy.
11 In other words, it's my theory that the government must
12 prove the existence of the conspiracy. They cannot use
13 Lawrence's testimony as to the agreement to sustain their
14 conspiracy count.

15 THE COURT: I understand your point. I don't
16 think it's well taken. You made it during the trial.

17 MR. STONE: I did.

18 THE COURT: I ruled against you on that.

19 MR. STONE: I also would ask that you
20 include here that the possession must have been within
21 the Southern District of New York, and for example--

22 THE COURT: You mean on the second count?

23 MR. STONE: On the second count. There is no
24 testimony that the government offered that Margarita Torres
25 aided or abetted or possessed within the Southern District of

New York.

THE COURT: I decline to so charge.

MR. TOOMBS: Your Honor, I just join in the first of Mr. Stone's exceptions. I have none of my own.

THE COURT: The exceptions are noted.

(In open court.)

(Two United States Marshals were duly sworn.)

THE COURT: You may retire for your deliberations.

(The jury retired to deliberate at 11:45 a.m.)

(The jury returned to the courtroom at 2:55 p.m.)

(The jurors' names were called and all answered present.)

THE CLERK: Mr. Foreman, has the jury agreed upon a verdict?

THE FOREMAN: Yes.

THE CLERK: How do you find defendant Margarita Torres on Count One?

THE FOREMAN: Guilty.

THE CLERK: How do you find defendant Margarita Torres on Count Two?

THE FOREMAN: Guilty.

THE CLERK: How do you find defendant Eliana

